3.2.4 Repeat the procedure in Section 3.2.3 two times, i.e., until three injections are made at each dilution level. Calculate the average instrument response for each triplicate injection at each dilution level. No single injection shall differ by more than ±2 percent from the average instrument response for that dilution.

3.2.5 For each level of dilution, calculate the difference between the average concentration output recorded by the analyzer and the predicted concentration calculated in Section 3.2.2. The average concentration output from the analyzer shall be within ±2 percent of the predicted value.

3.2.6 Introduce the mid-level supply gas directly into the analyzer, bypassing the gas dilution system. Repeat the procedure twice more, for a total of three mid-level supply gas injections. Calculate the average analyzer output concentration for the mid-level supply gas. The difference between the certified concentration of the mid-level supply gas and the average instrument response shall be within ±2 percent.

3.3 If the gas dilution system meets the criteria listed in Section 3.2, the gas dilution system may be used throughout that field test. If the gas dilution system fails any of the criteria listed in Section 3.2, and the tester corrects the problem with the gas dilution system, the procedure in Section 3.2 must be repeated in its entirety and all the criteria in Section 3.2 must be met in order for the gas dilution system to be utilized in the test.

4. References

1. ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' EPA–600/R93/224, Revised September 1993.

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BILLING CODE 6560–50–P

40 CFR Part 52

[CO9–3–5603; FRL–5201–9]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Regulation 7

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Colorado Ozone State Implementation Plan (SIP) submitted by the Governor on September 27, 1989, and August 30, 1990. The revisions consisted of amendments to Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.'' In its review of the September 27, 1989 State submittal, EPA identified several areas where the regulation still did not meet EPA requirements. On August 30, 1990, the State submitted additional revisions to Regulation No. 7 to address these deficiencies. This **Federal Register** action applies to both of these submittals. The amendments were made to conform Regulation No. 7 to federal requirements, and to improve the clarity and enforceability of the regulation. EPA's approval will serve to make the revisions federally enforceable and was requested by the State of Colorado.

EFFECTIVE DATE: This action will be effective on June 29, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office:

United States Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1814.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the Clean Air Act (CAA), as amended in 1990, provides the State the opportunity to amend its SIP from time to time as may be necessary. The State is utilizing this authority of the CAA to update and revise existing regulations which were promulgated pursuant to section 172 of the pre-amendment Act and are a part of the current SIP. In addition, these submittals are in fulfillment of the RACT requirement of amended section 172.

I. Background

On March 3, 1978, EPA designated the Denver-Boulder metropolitan area as nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone (43 FR 8976). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the CAA, as amended in 1990. Furthermore, since the Denver-Boulder area had not shown a violation of the ozone standard during the three-year period from January 1, 1987 to December 31, 1989, the Denver-Boulder area was classified as a ''transitional'' ozone nonattainment area under section 185A of the amended Act. In order to meet the Reasonably Available Control Technology (RACT) requirements of the CAA, transitional areas must correct any RACT deficiencies regarding enforceability.

The current Colorado Ozone SIP was approved by EPA in the **Federal Register** on December 12, 1983 (48 FR 55284). The SIP contains Regulation No. 7 (Reg. 7), which applies RACT to stationary sources of Volatile Organic Compounds (VOC). Reg. 7 was adopted to meet the requirements of section 172(b) (2) and (3) of the 1977 CAA (concerning the application of RACT to stationary sources [1].) However, the approved Ozone SIP did not rely on the emissions reduction credit that Reg. 7 would produce in order to demonstrate attainment; rather, the SIP relied only on mobile source controls in order to demonstrate attainment.

During 1987 and 1988, EPA Region VIII conducted a review of Reg. 7 for consistency with the Control Techniques Guidelines documents (CTGs) and regulatory guidance, for enforceability and for clarity. The CTGs, which are guidance documents issued by EPA, set forth measures that are presumptively RACT for specific categories of sources that emit VOCs. A substantial number of deficiencies were identified in Reg. 7. In 1987, EPA published a proposed policy document that included, among other things, an interpretation of the RACT requirements as they applied to VOC nonattainment areas (52 FR 45044, November 24, 1987, Post-87 Policy). On May 25, 1988, EPA published a guidance document entitled ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of the November 24, 1987 **Federal Register** Notice'' (the ''Blue Book''). A review of Reg. 7 against these documents uncovered additional deficiencies in the regulation.

On May 26, 1988, EPA notified the Governor of Colorado that the Carbon Monoxide (CO) SIPs for Colorado Springs and Fort Collins were inadequate to achieve the CO NAAQS. In that letter, EPA also notified the Governor that the Ozone SIP had significant deficiencies in design and implementation, and requested that these deficiencies be remedied. EPA did not make a formal call for a revised Ozone SIP in the May 1988 letter,[2] even though the Denver-Boulder area was,

[1] The requirement to apply RACT to existing stationary sources of VOC emissions was carried forth under the amended Act in section 172(c)(1).

[2] Under the pre-amended Act, EPA had the authority under section 110(a)(2)(H) to issue a ''SIP Call'' requiring a State to correct deficiencies in an existing SIP. Section 110(a)(2)(H) was not modified by the 1990 Amendments. In addition, the amended Act contains new section 110(k)(5) which also provides authority for a SIP Call.

and continues to be, designated nonattainment for ozone. The reason for this decision was that no violations of the ozone NAAQS had been recorded in the nonattainment area for the previous three years. However, EPA indicated that the deficiencies, if uncorrected, could jeopardize the area's ability to obtain eventual redesignation as an attainment area for ozone.

1. 1989 SIP Revision Submittal

In a letter dated September 27, 1989, the Governor of Colorado submitted revisions to Reg. 7 to partially address EPA's concerns with the Ozone SIP. A detailed description of the specific revisions to the regulation is contained in the Docket for this **Federal Register** document. Revisions were made to the following sections of Reg. 7:

7.I Applicability
7.II General Provisions
7.III General Requirements for Storage and Transfer of Volatile Organic Compounds
7.IV Storage of Highly Volatile Organic Compounds
7.V Disposal of Volatile Organic Compounds
7.VI Storage and Transfer of Petroleum Liquid
7.VIII Petroleum Processing and Refining
7.IX Surface Coating Operations
7.X Use of Solvents for Degreasing and Cleaning
7.XI Use of Cutback Asphalt
7.XII Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene As a Solvent
7.XIII Graphic Arts
7.XIV Pharmaceutical Synthesis
7.XV Control of Volatile Organic Compound Leaks from Vapor Collection Systems Located At Gasoline Terminals, Bulk Plants, and Gasoline Dispensing Facilities
Appendix A Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks
Appendix B Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)
Appendix D Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Trucks

In addition, the following new emission sources and appendices were added to Reg. 7:

7.IX.A.7 Fugitive Emission Control
7.IX.N. Flat Wood Paneling Coating
7.IX.O. Manufacture of Pneumatic Rubber Tires
7.XI.D. Coal Tar
Appendix E Emission Limit Conversion Procedure

In a letter dated September 27, 1989, the Governor of Colorado submitted revisions to Reg. 7 to address EPA's concerns with how the State was addressing RACT for major non-CTG sources of VOC. A detailed description of the specific revisions to the regulation is contained in the Docket for this **Federal Register** document. In summary, Section 7.II.C. of Reg. 7 applies this new non-CTG RACT requirement to sources not specifically covered by the regulation as follows:

(a) Sources with actual emissions of 100 tons per year or more of VOCs must apply RACT.

(b) Sources with potential emissions of 100 tons per year or more of VOCs, but with actual emissions of less than 100 tons per year, may avoid having to apply RACT by obtaining a federally enforceable permit to limit production or hours of operation to keep actual emissions below 100 tons per year.

(c) Sources with potential emissions of 100 tons per year or more of VOCs, but with actual emissions of less than 50 tons per year on a 12-month rolling average, may avoid RACT and permit requirements by: (1) Submitting a report each year demonstrating that the 50 tons per year threshold has not been exceeded and (2) maintaining monthly records of VOC usage and emissions to enable the State to verify these reports.

EPA is approving section 7.II.C. of the State's rules for its strengthening effect on the SIP.

2. 1990 SIP Revision Submittal

In general, the revised Reg. 7 (as submitted by the Governor on September 27, 1989) met the CAA requirements, which were interpreted in the CTGs, the Blue Book, and the Post-87 Policy. However, in its review, EPA identified two remaining issues where the regulation was not consistent with EPA guidance: A. The compliance schedule, and B. Clarification of the Graphic Arts definition for potential to emit. These remaining two issues were addressed by the State in its August 30, 1990 submittal.

In a letter dated August 30, 1990, the Governor of Colorado submitted revisions to Reg. 7 to address EPA's remaining concerns with the September 27, 1989 Ozone SIP revision. A detailed description of the additional specific revisions to Reg. 7 is contained in the Docket for this **Federal Register** document. Revisions were made to the following sections of Reg. 7:

7.I Applicability
7.XI Use of Cutback Asphalt
7.XIII Graphic Arts

A. Compliance Schedule: Reg. 7 did not contain an explicit deadline for compliance with the revised regulation. In response to EPA comments, the State adopted additional revisions (Section 7.I.B. and 7.I.C.) to Section 7.I. (Applicability) of Reg. 7, requiring all sources to come into compliance with the revised Reg. 7 by October 30, 1991.

B. Graphic Arts definition: The Graphic Arts definition of potential to emit, contained in Section 7.XIII.A.2. of Reg. 7, was somewhat unclear. The definition referenced the EPA requirement that potential to emit be determined at maximum capacity before control (per the Appendix D Clarification document), but also included a requirement that potential emissions be based on historical records of solvent and ink consumption (per the previous regulatory guidance document, *Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories*, September, 1979). As a result, the definition could have been interpreted to require potential to emit to be calculated at both maximum and historical operating rates, which in most cases will be different. The Reg. 7 revisions, submitted by the Governor on August 30, 1990, addressed this concern by not including a reference to the historical records.

C. Capture Efficiency: As a final issue, on January 13, 1992, EPA notified the State that, prior to proposing this action, it was necessary to document the State's position with regard to capture efficiency (CE) determination. The CE provision adopted by the State in Section IX.A.5.e of Reg. 7 does address the requirement that testing for CE be performed on a case-by-case basis, and that this testing be consistent with EPA guidance. In a letter dated February 5, 1992, from John Leary, Acting Director, Colorado Air Pollution Control Division, to Douglas Skie, Chief, Air Programs Branch, EPA Region VIII, the State committed to adopt and use all new CE methods as they are developed and promulgated by EPA's rule-making process. In that same letter, the State indicated that until changes are promulgated, the Air Pollution Control Division will use the CE protocols that were published by EPA on June 29, 1990 (55 FR 26814, codified at 40 CFR 52.741(a)(4)(iii) and Appendix B).

Due to additional information received after the adoption of revisions to Reg. 7 in September, 1989, the State reconsidered its regulation of coal tar under Section 7.XI. (Use of Cutback Asphalt). In revisions submitted on August 30, 1990, Section 7.XI.D., covering coal tar, was deleted. Regulation of coal tar is not covered by the CTG for cutback asphalt use; EPA believes that it is not needed to meet the RACT requirement of the CAA.

In this action, EPA is also approving the State's VOC definition as submitted in the 1989 and 1990 revisions to Reg. 7. However, on February 3, 1992, EPA

published a revised definition of volatile organic compounds (57 FR 3941). This definition was further revised on October 5, 1994, (59 FR 50693) and became effective on December 5, 1994. EPA's definition excludes a number of organic compounds from the definition of VOC on the basis that they are of negligible reactivity and do not contribute to tropospheric ozone formation. The State's definition excludes some, but not all, of these compounds. Therefore, the State's definition of VOC provides for the regulation of some compounds which are no longer considered VOCs by EPA. In light of EPA's most recent definition of VOC, EPA will not enforce against sources for failure to control the emission of compounds that are exempt from the federal VOC definition. EPA has informed the Region VIII States of the revised definition of VOC and has requested that future SIP revisions reflect the most recent federal VOC definition.

This action was previously published as a Direct Final Rule on June 26, 1992 (57 FR 28614). This Direct Final Rule was withdrawn on August 12, 1992 (57 FR 36004) as EPA Region VIII received a letter, dated July 16, 1992, from William Owens, Executive Director of the Colorado Petroleum Association (CPA), to Jeff Houk of EPA Region VIII, expressing adverse comments. EPA published a Proposed Rule on November 16, 1994 (59 FR 59189) proposing approval of these revisions to Reg. 7. Comments regarding the November 16, 1994, Proposed Rule were received from Stanley Dempsey Jr. on behalf of the Colorado Association of Commerce and Industry (CACI). These comments, in addition to those received earlier, are hereby addressed in this Final Rule as follows:

CPA Comment 1: In its first comment, CPA states that ''EPA was required by the amended Clean Air Act to determine by June 30, 1992, whether the transitional area had attained the NAAQS. EPA failed to issue this determination by the required date. This determination will re-establish the purpose of the SIP and, therefore, should be considered prior to any SIP approval. At a minimum, the SIP approval should be proposed to allow the opportunity for comment based on the required determination of current attainment status.''

Response to CPA Comment 1: As indicated in the proposed rule for this action (59 FR 59189, dated November 16, 1994), EPA had previously reviewed the available ambient air quality data. In a letter dated October 22, 1992, from Jack McGraw, EPA Region VIII Acting Regional Administrator, to Governor Roy Romer, EPA advised the State that the Agency had reviewed the ambient air quality data which had been entered by the State into the Aerometric Information and Retrieval System (AIRS) national database. EPA further advised that these data indicated that the Denver-Boulder metropolitan transitional ozone nonattainment area had not violated the ozone NAAQS during the period beginning January 1, 1987, and ending December 31, 1991. EPA's October 22, 1992, letter was not a determination that the Denver-Boulder nonattainment area had met the CAA's section 107(d)(3)(E) criteria for redesignation to attainment, but rather served as an affirmation that no violation of the ozone standard for this area was found. EPA cannot make a determination under section 107(d)(3)(E) until the State submits a complete redesignation request and maintenance plan. One criterion for redesignation to attainment for transitional ozone nonattainment areas, is that to satisfy section 172(c)(1), transitional areas must ensure that any deficiencies regarding enforceability of an existing RACT rule are corrected (refer to 57 FR 13525 dated April 16, 1992).

CPA Comment 2: In its second comment, CPA states ''In addition, the basis for the EPA's determination of deficiencies in Regulation No. 7 is based on the ''Post-87'' policy which includes the proposed policy regarding the application of RACT in non-attainment areas. CPA questions the application of this policy to areas designated transitional under the amended Clean Air Act.''

Response to CPA Comment 2: The Denver-Boulder area, while classified as transitional, continues to be a designated ozone nonattainment area. Therefore, the Post-87 policy retains its validity for the Denver-Boulder area. Although the Denver-Boulder transitional ozone nonattainment area was not subject to the RACT fix-up requirement, section 182(a)(2)(A), of the amended CAA, the RACT requirement of section 172(c)(1) is applicable. Pursuant to that provision, EPA has determined that it is necessary for the State to correct previously identified significant deficiencies in design, implementation and enforcement in the provisions of Reg. 7.

In a letter dated May 26, 1988, from James Scherer, Regional Administrator for EPA Region VIII, to Governor Roy Romer, EPA notified the State that the Carbon Monoxide SIPs for Colorado Springs and Fort Collins were inadequate to achieve the CO NAAQS. In that same letter, EPA also notified the Governor that the Ozone SIP for the Denver-Boulder metropolitan area had significant deficiencies in design and implementation and requested that those deficiencies be remedied. These specific deficiencies were subsequently documented to the State in a letter, dated June 17, 1988, from Irwin L. Dickstein, Director of the Air and Toxics Division for EPA Region VIII, to Thomas M. Vernon Jr. M.D., the Executive Director of the Colorado Department of Health. The General Preamble to Title I of the 1990 amended CAA (57 FR 13525, dated April 16, 1992) reaffirmed EPA's RACT policy. It provides that to satisfy requirements in section 172(c)(1) of the CAA (''NONATTAINMENT PLAN PROVISIONS IN GENERAL''), transitional ozone nonattainment areas must ensure that any deficiencies regarding enforceability of an existing rule are corrected. The General Preamble to Title I continues by stating that States should be aware that in order to be redesignated to attainment, such transitional ozone nonattainment areas need to correct any RACT deficiencies regarding enforceability prior to redesignation. For the reasons stated above, EPA believes that the 1989 and 1990 revisions to Reg. 7 that have been adopted by the State, are necessary in order to ensure that the RACT requirements of the CAA are met.

CPA Comment 3: In its third comment, CPA states ''The provisions for application of RACT under the revisions to Regulation No. 7 will have a direct impact on CPA's membership. Such revisions may not be needed to demonstrate maintenance of the ozone NAAQS and may result in unreasonable requirements in light of current regulatory developments.''

Response to CPA Comment 3: EPA is convinced that the revisions to Reg. 7 strengthen the Ozone SIP and are necessary for the Denver-Boulder metropolitan area to continue to achieve the ozone NAAQS as the area continues to experience the significant growth which has occurred in the past few years. EPA believes the benefits from the 1989 and 1990 revisions to Reg. 7 are likely contributing to the improvement in ozone levels that have been observed when compared to prior years. However, the ambient air quality data in AIRS indicates there were still ozone NAAQS exceedences in 1989 (0.130 ppm) and 1993 (0.128 ppm) with near-exceedence values in 1990 (0.120 ppm) and 1992 (0.123 ppm). The above values do appear to be improving, however, when compared to the 28 ozone NAAQS exceedences that were observed from 1980 through 1988.

CACI Comment 1: In its first comment, CACI states ''The Denver-Boulder area has not exceeded the ozone National Ambient Air Quality Standards since 1987. The current SIP has, therefore, appropriately allowed the area to attain the NAAQS. Therefore, there is no need for more stringent control of stationary source emissions of volatile organic compounds (VOC).''

Response to CACI Comment 1: CACI's comment is not correct. Based on data archived in the AIRS national database, the Denver-Boulder ozone nonattainment area has exceeded the ozone NAAQS as follows: 1988 (twice, 0.125 ppm and 0.136 ppm), 1989 (0.130 ppm), and 1993 (0.128 ppm). Although exceedences of the ozone standard have been recorded, EPA believes that the 1989 and 1990 revisions to Reg. 7 likely contributed to the decreased frequency of exceedences after 1990 and the fact that the Denver-Boulder nonattainment area has not violated the ozone standard.

CACI Comment 2: In its second comment, CACI provides an ozone emission inventory, whose source is not referenced, of ''Mobile sources, Minor stationary sources, Consumer products, and Major point sources.'' CACI then states ''Major stationary sources contribute only ten percent to an approximate daily inventory of 200 tons per day. Attachment 4 shows the Denver VOC emissions contributions. We question why Reg 7 is a SIP requirement for stationary sources, whose daily contribution is minor compared to mobile sources, while mobile sources have little or no control.''

Response to CACI Comment 2: Under both the pre-amended Act and the Act as amended in 1990, certain stationary sources are required to implement RACT. The purpose of the 1989 and 1990 revisions to Reg. 7 was that EPA required the State to correct identified concerns within Reg. 7, which was already part of Colorado's SIP, that involved significant design, implementation, and enforceability problems. With regard to the CACI provided emissions inventory, EPA cannot validate this emissions inventory as, to date, no current ozone emissions inventory has been submitted by the State. Correspondence in EPA's files indicates the State prepared a preliminary ozone emission inventory in 1987–1988, which was submitted to EPA in 1989. This inventory was not finalized. CACI's comment implies that mobile sources have little or no control of emissions. EPA disagrees as Colorado has had an inspection and maintenance program, for on-road vehicles, since 1983. This program was replaced with an enhanced inspection and maintenance program which began implementation on January 1, 1995. Also, mobile source emission reductions have been realized with the implementation of Federal Motor Vehicle Control Programs (FMVCP).

CACI Comment 3: CACI's third comment states ''The current Colorado Ozone SIP was approved by EPA in 1983 (48 FR 55284). The SIP contains a 1981 version of Reg 7 which applies RACT to stationary sources of VOC. The approved Ozone SIP did not rely on the emissions reduction credit that Reg 7 would produce in order to demonstrate attainment; rather, the SIP relied only on mobile source controls in order to demonstrate attainment. There is no ozone attainment demonstration which requires any Reg 7 emission reductions from stationary sources, based on our information and belief. Therefore, there is no demonstrated need for a more stringent revision to the Ozone SIP.''

Response to CACI Comment 3: The reader is referred to EPA's response to CPA Comment 2 above as it is directly applicable to CACI's Comment 3. It should be noted that the Denver-Boulder ozone nonattainment area exceeded the ozone NAAQS 25 times during the years 1981 through 1988. This fact was also considered when EPA sent the Governor the May 16, 1988, letter referenced above. Therefore, although the 1981 attainment demonstration relied solely on the mobile source controls, the Denver-Boulder area failed to attain the ozone standard in accordance with that demonstration. In addition, the Denver-Boulder area retained its nonattainment designation under the amended CAA and EPA believes the continued applicability of the RACT requirement makes it necessary for the State to correct existing deficiencies in its RACT rules.

CACI Comment 4: CACI's fourth comment states ''The current Ozone SIP contains a definition of VOC that was based on a threshold vapor pressure of 0.1 mm Hg vapor cutoff. EPA modified this definition of VOC (40 CFR 51.100(s)) in 1988. The current Ozone SIP approval of Reg 7 was written with the 0.1 mm Hg vapor cutoff in mind as de minimis threshold. In 1991 the AQCC modified the VOC definition in Colorado Regulations, which inadvertently removed the Reg 7 de minimis threshold. A comparison of other state's de minimis voc thresholds is shown in Attachment 1. A comparison of other state's de minimis size cutoffs and vapor pressure cutoffs is shown in Attachment 2. An example of the extreme cost and minimal air quality benefit of Reg 7 without correcting the inadvertent error of eliminating the de minimis cutoffs is shown in Attachment 3. Therefore, revising the Ozone SIP by adopting the 1989 and 1990 Reg 7 submittal is without legal basis and is more stringent than EPA requires or the AQCC intended.''

Response to CACI Comment 4: As an initial matter, EPA cannot disapprove a SIP revision merely because it may be more stringent than required by the CAA. *See* CAA section 116. Similarly, EPA cannot unilaterally determine that a rule will have a more stringent effect than the State intended and rely on such a determination for disapproval. With respect to the comment that there is no legal basis, EPA notes that EPA's approved definition of a Volatile Organic Compound (VOC) is found in 40 CFR Part 51, Subpart F—Procedural Requirements, at 51.100 Definitions, (s) Volatile organic compounds (VOC). In 51.100(s), a VOC is defined as ''. . . any compound of carbon, excluding . . . which participates in atmospheric photochemical reactions.'' As stated in 40 CFR 51.100(s), a VOC is defined based upon atmospheric photochemical reactivity. There is no provision for a VOC to be defined, or exempted, based upon vapor pressure. This vapor cutoff provision was rescinded by EPA in 1988, as such a definition for VOCs would exempt compounds of low volatility, which, under certain processes, could volatilize and, therefore, participate in atmospheric photochemical reactions (refer to EPA's ''ISSUES RELATING TO VOC REGULATION CUTPOINTS, DEFICIENCIES, AND DEVIATIONS, Clarification to Appendix D of [the] November 24, 1987 **Federal Register**'', dated May 25, 1988 and revised November 11, 1990. This document is more commonly referred to as the ''Blue Book''). The only acceptable method to exempt a carbon compound from being classified as a VOC is that it must be determined that the compound has negligible photochemical reactivity (refer to 40 CFR 51.100(s)(1), (2), (3), and (4)).

As stated above and in the proposed rule (59 FR 59189) for this action, EPA is approving the State's VOC definition as submitted in the 1989 and 1990 revisions to Reg. 7. However, on February 3, 1992, EPA published a revised definition of volatile organic compounds (57 FR 3941) with a further revision on October 5, 1994 (59 FR 50693, effective December 5, 1994). The definition excludes a number of organic compounds from the definition of VOC on the basis that they are of negligible

reactivity and do not contribute to tropospheric ozone formation. The State's definition excludes some, but not all, of these compounds. Therefore, the State's definition of VOC provides for the regulation of some compounds which are no longer considered VOCs by EPA. In light of EPA's most recent definition of VOC, EPA will not enforce against sources for failure to control the emission of compounds that are exempt from the federal VOC definition.

CACI Comment 5: CACI's fifth comment states ''The 1989 Reg 7 rulemaking which took place over five years ago did not anticipate the lack of de minimis thresholds for a federally enforceable condition. Upon information and belief, since 1988 there has been no ozone attainment demonstration to examine the impact of this revised Reg 7 on our area, i.e., do not know the need for or the impact of Reg 7. However, now that the program is largely self-administering, if Reg 7 becomes a federally enforceable condition, CACI believes many sources in the Denver-Boulder area will be out of compliance with their Title V permits. Therefore, without knowing the impacts of revised Reg 7, we are putting Denver-Boulder industry at risk of enforcement action. To prevent this result, we propose the submittal be delayed until the AQCC can address this issue through rulemaking.''

Response to CACI Comment 5: EPA does not understand CACI's comment that the 1989 rulemaking did not anticipate the lack of de minimis thresholds. EPA believes that the 1989 and 1990 revisions to Reg. 7 contain ''de minimis thresholds'' in that exemptions and/or applicability thresholds do appear in Sections II., III., IV., VI., VII., VIII., IX., X., XI., XII., XIII., XIV., and XV. of Reg. 7. These exemptions and applicability thresholds were developed by the State and determined appropriate in consideration of the RACT requirement of the CAA and EPA policy and guidance. With respect to enforcement, EPA notes the 1989 and 1990 revisions to Reg. 7 were legally adopted by the State. Therefore, as stated in Section I. ''APPLICABILITY, B., 2. Existing Sources, c.'' of the revised Reg. 7, all applicable existing sources were required to be in compliance with Reg. 7 on or after October 30, 1991. Additionally, Section I. ''APPLICABILITY, B., 1. New Sources'' provides that ''New sources, defined as any sources which * * * commence operation on or after October 30, 1989, must comply with the provisions of this regulation upon commencement of operation.'' Based on the above, the 1989 and 1990 revisions have been State-enforceable since November 1, 1991, for existing sources, and November 1, 1989, for new sources. Therefore, the impacts from the enforcement of the 1989 and 1990 revisions to Reg. 7 have already been realized by applicable sources in the Denver-Boulder area.

It is unclear to EPA the intent of CACI's statement that sources would be out of compliance with their Title V permits when EPA fully approves the 1989 and 1990 revisions to Reg. 7. The Title V permits will not include any new VOC control requirements, but they will include all federally enforceable requirements and State enforceable requirements. As stated above, compliance with Reg. 7 should have already occurred as existing sources and new sources were required to comply with the applicable provisions of Reg. 7 since November 1, 1991, and November 1, 1989, respectively. Moreover, to the extent that these new requirements are not included in a Title V permit that has been issued prior to the effective date of this final action, the approval of these requirements into the SIP will not in and of itself render such a source out of compliance with its Title V permit. However, consistent with 40 CFR 70.7(f)(1)(i), a source with three or more years remaining on the term of its permit would need to reopen the permit to incorporate these requirements, while a Title V source with less than three years remaining on the permit could incorporate them at renewal. Finally, EPA does note, however, that sources which are subsequently discovered, during the process of applying for a Title V permit, that are not complying with the applicable provisions of Reg. 7, may receive an enforcement action by either the State or EPA depending upon the situation.

Also, approval by EPA of the 1989 and 1990 revisions to Reg. 7 additionally make these revisions federally enforceable and officially revises and updates the State's SIP.

CACI Comment 6: In its sixth comment, CACI states ''Finally, EPA's approval of Reg 7 without de minimis thresholds does not meet the spirit of President Clinton's Common Sense Initiative, and it is inconsistent with the Economic Incentive Program (EIP) Rule. CACI urges the AQCC and EPA to review Reg 7 to determine proper de minimis threshold provisions prior to adopting Reg 7 into the SIP.''

Response to CACI Comment 6: As stated above in EPA's response to CACI's Comment 5, the 1989 and 1990 revisions to Reg. 7 contain ''de minimis thresholds'' in that exemptions and/or applicability thresholds appear in Sections II., III., IV., VI., VII., VIII., IX., X., XI., XII., XIII., XIV., and XV. of Reg. 7. These exemptions and applicability thresholds were developed by the State and determined appropriate in consideration of the RACT requirement of the CAA and EPA policy and guidance. EPA also participated in the development and review of these revisions to Reg. 7 and has determined the 1989 and 1990 Reg. 7 revisions to the SIP to be fully federally approvable.

EPA disagrees with the CACI statement that approval of the 1989 and 1990 revisions to Reg. 7 is inconsistent with the EIP rules. The 1989 and 1990 Reg. 7 revisions were required by EPA to address design, implementation, and enforceability problems with Reg. 7. The EIP rules, promulgated on April 7, 1994 (59 FR 16710), and codified at 40 CFR Part 51, ''Subpart U-Economic Incentive Programs'', do not determine source specific or category specific RACT requirements. Instead, the EIP rules set forth an alternative program, in this particular reference, for implementing new and/or previously existing RACT requirements through emissions trading (reference 40 CFR 51.493). EIPs were required as a SIP revision for certain ozone and carbon monoxide nonattainment areas as indicated in sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the CAA. The Denver-Boulder transitional ozone nonattainment area was not required to submit an EIP. EPA notes, however; as provided in 40 CFR 51.490(b), the Denver-Boulder area may elect to submit a discretionary EIP revision to the Colorado SIP.

CACI Comment 7: In its seventh comment CACI states ''The Denver-Boulder area, as indicated above, has had no exceedences of the ozone standard since 1987. The area is designated transitional and it is subject to redesignation as attainment. In the 'Background' statements to the proposed rule (59 FR 59191) EPA states: 'For a maintenance plan to be approved and the Denver-Boulder metropolitan area to be redesignated as attainment pursuant to section 107(d)(3)(E), the State, may have to develop specific RACT regulations for major non-CTG sources. Information available to EPA suggests that there has been growth in emissions from some non-CTG sources in the area; RACT regulations for these sources may be necessary to ensure maintenance of the NAAQS for the initial 10-year redesignation attainment period, as is required by section 175A of the ACT.' CACI asks that EPA not act on the Governor's 1989 and 1990 proposal until after a request for redesignation is submitted so that [the] current Reg 7 can

be reviewed and modified as part of the maintenance plan.''

Response to CACI Comment 7: The reader is referred to EPA's responses to CACI's Comment 1 and CPA's Comment 2. In addition, EPA notes that it does not have the discretion to unilaterally withhold action on the submittals of the 1989 and 1990 Reg. 7 revisions until the State submits its redesignation request and maintenance plan. EPA will work with the State in developing its redesignation request and maintenance plan, if so requested, to determine if any modifications to Reg. 7 are legally supported.

Final Action

EPA is approving Colorado's Ozone SIP revisions, submitted by the Governor on September 27, 1989, and August 30, 1990. These revisions consist of amendments to Reg. 7.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 19, 1995.

William P. Yellowtail,

Regional Administrator.

40 CFR part 52, subpart G, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(70) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(70) Revisions to the Colorado State Implementation Plan were submitted by the Governor on September 27, 1989, and August 30, 1990. The revisions consist of amendments to the Ozone provisions in Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.''

(i) Incorporation by reference.

(A) Revisions to Regulation No. 7, Sections 7.I (Applicability), 7.II (General Provisions), 7.III (General Requirements for Storage and Transfer of Volatile Organic Compounds), 7.IV (Storage of Highly Volatile Organic Compounds), 7.V (Disposal of Volatile Organic Compounds), 7.VI (Storage and Transfer of Petroleum Liquid), 7.VIII (Petroleum Processing and Refining), 7.IX (Surface Coating Operations), 7.X (Use of Solvents for Degreasing and Cleaning), 7.XI (Use of Cutback Asphalt), 7.XII (Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene as a Solvent), 7.XIII (Graphic Arts), 7.XIV (Pharmaceutical Synthesis), 7.XV (Control of Volatile Organic Compound Leaks from Vapor Collection Systems Located at Gasoline Terminals, Bulk Plants, and Gasoline Dispensing Facilities), and Appendices A (Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks), B (Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants-Vapor Balance System), and D (Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Trucks). The following new emission sources and appendices were added to Regulation No. 7: 7.IX.A.7 (Fugitive Emission Control), 7.IX.N. (Flat Wood Paneling Coating), 7.IX.O. (Manufacture of Pneumatic Rubber Tires), and Appendix E (Emission Limit Conversion Procedure). These revisions became effective on October 30, 1989, and August 30, 1990.

(ii) Additional material.

(A) February 5, 1992, letter from John Leary, Acting Director, Colorado Air Pollution Control Division, to Douglas Skie, EPA. This letter contained the State's commitment to conduct capture efficiency testing using the most recent EPA capture efficiency protocols, and the commitment to adopt federal capture efficiency test methods after they are officially promulgated by EPA.

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